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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 3690/2011

V.V.MURALI

..... Petitioner

Through Mr.Tom Joseph, Adv.

versus

SUMANGALAM WOOD PRODUCTS (I) PVT. LTD.

..... Respondent

Through Nemo

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

09.11.2011

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1. By virtue of the present petition under Section 482 Cr.P.C., the petitioner has prayed that the summoning order and the proceedings thereunder initiated on the basis of the complaint case bearing no.2598/10 under Section 138 of the Negotiable Instruments Act pending before Sh.Vishal Pahuja, learned MM, Tis Hazari Courts, be quashed.
2. It has been contended by the learned counsel for the petitioner that the aforesaid complaint has been filed by the respondent /complainant in respect of dishonour of a cheque for a sum of ₹7 lacs. It is contended that there was an agreement between the petitioner and the respondent with regard to certain business transactions for a sum of ₹20 lacs, out of which, the petitioner

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had already paid a sum of ₹18 lacs to the respondent and the cheque in question which has been presented was only furnished by way of security. It is contended by the learned counsel for the petitioner that at best an amount of Rs.2 lacs is payable for which no cheque has been issued by him.

4. I have considered the submissions made by the learned counsel for the petitioner.
5. The cheque which bounced and in respect of which the complaint has been filed was for a sum of ₹7 lacs purported to have been drawn by the petitioner on Union Bank of India. Under Section 139 of the Negotiable Instruments Act, there is a presumption of issuance of a cheque by the drawee in discharge of his liability or the debt which is payable.
6. The contention of the learned counsel for the petitioner that the total transaction between the petitioner and the respondent was for a sum of ₹20 lacs, out of which Rs.18 lacs have already been paid is a defence raised by the petitioner. This cannot be a ground for quashing of the summoning order and the complaint which is admittedly in respect of dishonour of a cheque for a sum of ₹7 lacs. At best, it raises a disputed question of fact which can be adjudicated only after both the parties will adduce their respective evidence. Accordingly, the submission is

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rejected.

7. The second submission made by the learned counsel for the petitioner is that the Delhi Courts do not have the jurisdiction because the cheque is purported to have been issued in Kerala and the bank from which the cheque was dishonoured is also situated in Kerala while as the present complaint has been filed in Delhi.
8. I have considered the submission of the learned counsel for the petitioner. In para 9 of the complaint, the averments have been made by the respondent/complainant which prima facie confers jurisdiction on the Delhi Court, the said para 9 reads as under:-

"9. That the cheque in question was signed, tendered and issued in favour of the complainant at its Delhi office and the cheque was also presented in complainant account in New Delhi and complainant's banker viz. 'CORPORATION BANK, NAJAFGARH ROAD, DELHI' is also in Delhi, where the cheque in question was presented and further, the statutory notice under the Act was issued from Delhi and the dishonour memo issued by the complainant banker, which also in Delhi. Therefore, the offence has been accrued in the jurisdiction of this Hon'ble Court. The cheque in question was drawn and issued in favour of the complainant by the accused from the account pertaining to the company i.e. accused for discharging his legally enforceable liability vis-à-vis the complainant. That the same was returned by its bank unpaid for the reason of 'Funds Insufficient in Account' The accused, therefore, has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 as amended by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002."

9. The first sentence of the aforesaid paragraph shows that an averment has been made by the respondent that the cheque in question was signed, tendered and issued by the petitioner to the respondent/complainant in his Delhi office. The plea of the learned counsel for the petitioner that the cheque was issued in Kerala is at best a question which can be decided only after both the parties adduce their evidence.
10. In addition to this if one reads para 9 of the complaint which mentions not only the handing over of the cheque by the present petitioner to the respondent but also talks about number of other acts which if taken cumulatively, in my considered opinion confers jurisdiction on Delhi Courts, therefore, the second submission made by the learned counsel for the petitioner is also rejected.
11. In view of the aforesaid submissions, I feel that the present petition is totally misconceived and the same is accordingly dismissed.



V.K. SHALI, J

NOVEMBER 09, 2011/RN

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